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SEP 19 2005

OFFICE OF PETITIONS

In re Application of :
El-Sherif :
Application No. 10/626,091 : DECISION ON PETITION
Filed: July 24, 2003 : UNDER 37 CFR 1.137(b)
Attorney Docket No. TI-35811 :
:

This is a decision on the petition under 37 CFR 1.137(b), submitted July 15, 2005, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D).

The instant petition lacks item(s) (1) the required reply.

This application became abandoned, by operation of law, for failure to timely reply within the three month shortened statutory period set in the final Office Action mailed on October 21, 2004 to the address identified above. No extensions of time have been obtained pursuant to the provisions of 37 CFR §1.136(a). The date of abandonment of this application was January 22, 2005. An amendment after final was filed January 17, 2005 but failed to place the application in condition for allowance. An advisory action in response to the amendment after final was mailed on March 11, 2005 to the address above.

MPEP 711.03(c) sets forth the required reply to a final rejection includes either (a) a Notice of appeal and appeal fee; (b) an amendment that places the application in condition for allowance; or (c) the filing of an RCE. Petitioner's request "that the deposit account be charged for this Petition to Revive and the enclosed Amendment be treated as a response to the office action" is insufficient authorization for any of the optional required responses to a final action.

Petitioner argues that there was inconsistency between the Office Action Summary Form PTOL-326 and the action on the merits. Note that the body of the action clearly sets forth that the action was made final in the last paragraph. MPEP 707 states that under the current practice, the examiner signifies on the Office Action Summary Form PTOL-326 certain information including the period set for reply, any attachments, and a "Summary of Action," which is the position taken on all the claims. Note further that the Form PTOL-326 does not list what type of rejection is being made, thus counsel must review the entire body of the action to ascertain the merits of the action and prepare a complete and proper reply to the outstanding office action. The Office Action Summary Form PTOL-326 serves as a mere summary of the action and not the merits of the action.

It is unclear from the record whether the attorney of record reviewed a copy of the advisory action mailed March 11, 2005, thus a copy is being provided with this decision.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Telephone inquiries concerning this decision should be directed to Angela Ortiz at (571) 272-6051, or in her absence, the undersigned at (571) 272-3217.

Frances Dickson
Brian Hearn
Petitions Examiner
Office of Petitions

Attachment: Copy of Advisory Action (3/11/05)